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Bill would tap tobacco funds

Democrats see \$75 million for school, health programs

By Tom Loftus

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The Courier-Journal

FRANKFORT, Ky. — Spending on education and health programs could grow by as much as \$75 million under a plan that House Democrats said yesterday would rely on money from tobacco companies.

And anti-smoking programs would get nearly twice the \$4.8 million that Gov. Ernie Fletcher proposed, House Speaker Jody Richards said.

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tobacco companies signed with 46 states.

Richards said the Democrats' plan has no risks and has been carried out in Virginia and North Carolina. Details about how the money would be spent will be worked out in the House budget committee that is considering the budget bill.

Given the House priorities, Richards said most of the additional money would go to education and health services.

The plan is a different approach to one Fletcher offered to shore up the budget with money that tobacco companies pay in response to lawsuits from states over the cost of health care for smokers.

Democrats contend Fletcher's proposal could put Kentucky at risk of losing payments the state gets under the Master Settlement Agreement, which



A Fletcher administration spokesman called Richards' proposal a "Band-Aid" and defended the governor's plan.

Michael Goins, spokesman for Fletcher's budget office, said the governor will continue to push his approach because it would help Kentucky get its fair share of tobacco money and generate as much as \$150 million a year in additional revenue.

Ron Tully, vice president of National Tobacco Co. of Louisville, said he believes the state would get far less under the Democrats' plan than Richards estimated.

"This approach is not going to make the cash register ring for Kentucky," Tully said.

But anti-smoking advocates were pleased with the plan, which offers more money for their programs.

"We appreciate the speaker's personal commitment to expanded funding for the state's woefully underfunded tobacco prevention and cessation program," said Amy Barkley, director of the Campaign for Tobacco Free Kids.

Sen. Charlie Borders, a Russell Republican who heads the Senate budget committee, said he has not seen the House proposal and most senators have not decided whether to support Fletcher's plan.

"We're open-minded. But we've got concerns," Borders said.

The concerns of legislators center on whether Fletcher's plan could result in Kentucky losing tobacco company revenue under the settlement agreement -- or having that revenue delayed by lawsuits.

Complicated history

In 1998, Kentucky joined 45 other states in signing the agreement with major cigarette manufacturers. The states agreed to drop lawsuits over the harmful effects of smoking in exchange for annual payments from the companies.

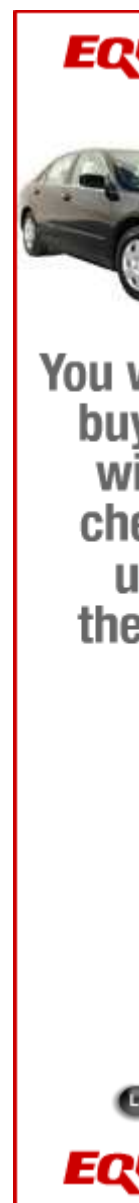
During two major speeches to the General Assembly last month, Fletcher endorsed a proposal to change how those payments are made.

He said under the agreement Kentucky gets far less than its fair share based on the amount of cigarettes sold in each state. Fletcher and chief of staff Stan Cave have argued that for every \$4 Kentucky's smokers pay into the settlement fund, the state gets back about \$2 -- meaning it subsidizes states with larger claims, such as California and New York.

So Fletcher wants the companies to pay Kentucky the \$4-per-carton fee on cigarettes sold in Kentucky to replace the lesser payments Kentucky now gets from the agreement.

The difference, Fletcher said, is that Kentucky would get its fair share from the agreement.

Kentucky Attorney General Greg Stumbo has said Fletcher's proposal could result in a breach of the agreement.



In a letter to legislators, Stumbo and Assistant Attorney General Michael Plumley said Kentucky is legally required to support the agreement.

The letter said Fletcher's plan could result in lawsuits against the state, and that Kentucky could be found to have violated the agreement. That would jeopardize settlement payments from tobacco companies of about \$105 million a year, according to the attorney general's office.

Stumbo suggested that Kentucky file a lawsuit, asking a judge to determine whether Fletcher's proposal is permissible.

Cave said Stumbo's letter "does not identify a single provision" of the agreement that the plan would definitely breach.

"There are too many questions with that," Richards said yesterday. "There's a chance we could lose the whole ball of wax."

Rep. Harry Moberly, a Richmond Democrat who is chairman of the House budget committee, said Democrats did not offer their idea earlier because the issue didn't come up until Fletcher made his proposal.

Details of Democratic plan

Not all tobacco companies took part in the Master Settlement Agreement.

The General Assembly required nonparticipating companies to pay into an escrow account \$4 per carton for Kentucky sales. That fund, which is not available now to the state to spend, protects them from lawsuits in a manner similar to the protection of companies in the agreement.

Under the bill Richards filed yesterday, the nonparticipating companies would have the option of making the \$4 payments to the state rather than the escrow fund while retaining protection from lawsuits.

Richards said the companies will agree to pay the state because doing so has significant tax advantages to placing the funds in escrow.

He said the escrow fund could generate \$20 million to \$30 million a year for Kentucky.

He also said that, combined with a balance of about \$15 million in that fund today, the 2006-08 budget could receive as much as \$75 million.

Tully said that nonparticipating companies now are at a disadvantage. He said while the concept of the settlement agreement was for all of its participants to pay \$4 per carton into the fund, many don't pay that much -- particularly those that were induced to join after the original agreement by having some of their sales exempted from the \$4 payments.

"Until the playing field is leveled for us, I don't believe many nonparticipating companies will agree," he said.

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